IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11974 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SARVESH LALLUBHAI NAYAK

Versus

COMMISSIONER OF POLICE

Appearance:

MS BANNA S DUTTA for Petitioner No. 1

MR RM CHAUHAN, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 01/10/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order dated 07.4.2003 passed by the Police Commissioner, Vadodara City, against

him, in exercise of powers under Section 3(1) of 1985 (hereinafter referred to as "PASA Act") declaring the petitioner to be a "dangerous person" within the meaning of the PASA Act, and directing the detention of the petitioner. In pursuance of the said impugned order in this petition, the petitioner is detained in jail since 07.4.2003.

2. The grounds served upon the petitioner and placed on record discloses that offences of theft, six in all, came to be registered against the detenu within the span of period from 13.08.2002 to 14.2.2003. The offences are registered under Sections 457, 380 and 114 of the Indian Penal Code. The detaining authority also took into consideration in-camera statements of two witnesses recorded by the proposing authority on 17.3.2003 and 21.3.2003 and verified by the detaining authority on 04.4.2003. These statements reveal the incidents of 26.1.2003 about propensity of the petitioner to be a headstrong person.

3. Learned Advocate Ms.Banna Dutta for the petitioner and learned AGP Mr. R.M. Chauhan for the respondents were heard at length. Learned AGP has placed on record the affidavit-in-reply of the detaining authority which is also taken into consideration.

4. Out of various contentions raised on behalf of the petitioner, and controverted by the AGP, it appears that the matter can be disposed of on the ground that whether the detaining authority took into consideration the vital aspect of the matter while passing the order. It is mentioned in the grounds by the detaining authority that the petitioner was in judicial custody in all the six cases registered against him, but detaining authority expressed apprehension that the petitioner was likely to be released on bail in those offences, and was likely to be indulged in illegal activities. Learned Advocate for the petitioner makes a statement that till today, the petitioner has not moved any application for bail in those cases. Apparently, there was no material at all before the detaining authority to come to the conclusion that the petitioner was likely to be released on bail and was likely to be indulged in illegal activities. The facts of the case are, therefore, squarely covered by the decision of the Apex Court in the case of AMRUTLAL AND OTHERS vs. UNION GOVERNMENT THROUGH SECRETARY, MINISTRY OF FINANCE AND OTHERS, reported in AIR 2000 SC 3675. In this view of the matter, the order impugned in this Special Civil Application is required to be quashed and set aside on this ground alone.

5. In the result, this Special Civil Application is allowed with no order as to costs. The order impugned in this Application passed by the Police Commissioner, Vadodara City, on 07.4.2003 under Section 3(1) of the PASA Act against the petitioner is quashed and set aside. Petitioner is directed to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute.

(J.R. Vora, J.)

p.n.nair